IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1613 OF 2007

American Spring &
Pressing Works Pvt. Ltd. .. Petitioner.
Vs.
Haribansh N.Kshatri .. Respondent.

Mr.C.U.Singh i/b Sanjay Udeshi for the petitioner.
Mr.A.D.Shetty with Rita Joshi for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 11TH SEPTEMBER, 2007.

P.C.:

. Heard Mr.Singh, learned senior counsel for the petitioner and Mr.Shetty, learned counsel for the respondent.

2. Basically this writ petition challenges the award Part-I rendered by the Labour Court on 2nd April, 2007 by which it has held that the respondent-workmen was a workmen of the petitioner-company. It has further held that the enquiry conducted against him was not fair and proper and was in violation of the principles of natural justice and that the findings of the enquiry officer are perverse. The Labour Court has also granted liberty to the petitioner to justify its action by adducing evidence before the Tribunal.

3. At the outset, let me record the statement of Mr.Shetty, learned counsel for the respondent that the enquiry conducted against the respondent-workmen was fair and proper and he has no objection if the finding on the first issue is set aside. Apart from the statement made by Mr.Shetty there appear to be the finding recorded by the Labour Court in paragraph 40 that "there do not appear any sufficient reason to hold that the enqiry was not fair and proper." In the circumstances the findings of the Labour Court on the first issue as to whether there is violation of the principles of natural justice in conduct of the domestic enquiry is quashed and set aside and the enquiry is held to be fair and proper.

4. Mr.Singh, learned senior counsel wanted this court to examine the entire evidence at this stage and set aside the finding on issue no.2. Issue No.2 is to the effect whether the findings of the enquiry officer are perverse which has been answered in the affirmative. Taking overall view of the matter and the controversy involved and considering the settled position of law that there is no justification for any party to stall the final adjudication of the preliminary issue by questioning its decision with regard to the preliminary issue when the matter, if

worthy, can be agitated even after the final award is passed. It is true, in a given case this court's jurisdiction can be invoked to challenge the findings on the preliminary issue. However, I am of the opinion, that in the present case there is no justification to interfere at this stage and set aside the award Part I being illegal or invalid. I am satisfied that the jurisdiction of this court cannot be and need not be invoked for examining the validity and legality of the Award Part I and it could be examined after Part-II award is passed more particularly in view of the concession given by the learned counsel for the respondent in respect of the finding on issue no.1. Insofar as issue no.3 is concerned Mr.Singh, fairly stated that the findings on this issue may be kept open for the petitioner to challenge after the award part-II is passed. After having heard the learned counsel for the parties I am satisfied that the following order shall meet the ends of justice:

(i) The findings of the Labour Court on issue no.1 as to whether there is violation of the principles of natural justice in conduct of the domestic enquiry are quashed and set aside and it is held that the enquiry conducted was fair and proper.

(ii) The petitioner will be at liberty to challenge the findings of the Labour Court on issue nos.2 and 3 in the further proceedings after the award Part II is passed. All contentions of both the sides are kept open insofar as issue nos.2 and 3 are concerned.

(iii) It will be open for the petitioner to adduce additional evidence, if any, to justify its action.

. All contentions are kept open for the parties to raise in further proceedings that may be filed by either of the parties, after award Part II is passed by the Labour Cort. The Labour Court is directed to pass award Part II as expeditiously as possible and preferrably within a period of four months from the date of receipt of this order.

. The writ petition is disposed of.

(D.B.BHOSALE, J.)